

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6305

BILL NUMBER: HB 1006

NOTE PREPARED: Jan 30, 2013

BILL AMENDED: Jan 17, 2013

SUBJECT: Various Changes to the Criminal Code.

FIRST AUTHOR: Rep. Steuerwald

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

- A. *Community Corrections and Probation* – It makes various changes to the criminal code, including changes to the law concerning community corrections and probation.
- B. *Probation Improvement Fund* – It establishes the Probation Improvement Fund and appropriates \$1.9M annually from the Department of Correction (DOC) annual appropriation.
- C. *Judicial Center Drug and Alcohol Programs Fund* – It adds changes to the law concerning communicable disease crimes, battery, hazing, obstruction of traffic crimes, interference with medical services crimes, kidnapping, confinement, criminal mischief, railroad mischief, computer crimes, deception and fraud crimes, timber spiking, offenses against general public administration, criminal gang activity crimes, stalking, offenses against public health, child care provider crimes, and weapon crimes.
- D. *Credit-Restricted Felons* – It removes this felony classification for persons who have been convicted and committed for certain crimes involving child molesting and murder.
- E. *Drug Crimes and Protection Zones* – It changes the weight thresholds for determining the severity of crime and reduces the protective zone from 1,000 feet to 500 feet.
- F. *Earned Credit Time* – It increases the amount of credit time that an offender may earn for completing one or more career, technical, or vocational education programs approved by DOC. It specifies that credit time must be directly proportional to the time served and course work completed while incarcerated. It requires DOC to adopt rules to implement this change. It changes the way that an offender's release date is determined by applying earned credit time first. It reduces the total amount of earned credit time that an offender can earn from four to two years.

- G. *Theft* – It changes the thresholds for penalties related to theft.
- H. *Neglect Causing Death or Serious Bodily Injury* – It makes neglect causing death or serious bodily injury a nonsuspendable crime.
- I. *Repeal and Replace* – It repeals the law concerning criminal deviate conduct, and consolidates the crime of criminal deviate conduct into the crime of rape. It repeals laws concerning carjacking, and failure of a student athlete to disclose recruitment.
- J. *Four Felony Classes to Six Felony Levels Felony Penalty Classification* – It removes the current four-level felony penalty classification and replaces that classification with a six-level felony penalty classification.
- K. *Legislative Study* - It urges the Legislative Council to require an existing study committee to evaluate the criminal law statutes in IC 7.1 and IC 9 and to make recommendations to the General Assembly for the modification of the criminal law statutes in those titles.
- L. *Technical Corrections and Conforming Amendments*- It also makes technical corrections and conforming amendments.

(The introduced version of this bill was prepared by the Criminal Code Evaluation Commission.)

Effective Date: July 1, 2013; July 1, 2014.

Explanation of State Expenditures: (Revised) *Summary* – The sentencing changes in this bill are estimated to increase the prison population in the next biennium, but reduce the prison population in the out years. This table summarizes the provisions in the bill. [The costs of adding deputy chief probation officers will be updated when this information becomes available.]

Summary of Fiscal Effects of HB 1006										
		2015	2016	2017	2018	2019	2020	2025	2030	2035
Offenders Affected	Reclassification, Recalculating Release Date Based on Earned Credit Time	231	(461)	(937)	(1,416)	(1,578)	(1,036)	1,032	961	1,013
	Credit Restoration	354	354	354	354	354	354	354	354	354
	Retroactive Effect on Offenders Who Have Earned College Degrees	Pending*								
	Earned Credit Time Cap 4 Years to 2 Years	58	58	58	58	58	58	58	58	58
	Recidivism and Added Growth (2%)	584	596	608	620	632	645	712	786	868
Total Effect on DOC Facilities		1,227	547	83	(384)	(534)	21	2,156	2,159	2,293
Estimated Marginal Costs (\$8.86/day)		\$3.97	\$1.77	\$0.27	(\$1.24)	(\$1.73)	\$0.07	\$6.97	\$6.98	\$7.42
Cost in County Jails (\$35/day)		\$15.7	\$7.0	\$1.1	(\$4.9)	(\$6.8)	\$0.3	\$27.5	\$27.6	\$29.3
Appropriation for Probation Improvement Fund		\$1.90	\$1.90	\$1.90	\$1.90	\$1.90	\$1.90	\$1.90	\$1.90	\$1.90
Chief and Deputy Chief Probation Officers		Pending								
Low Estimate		\$5.9	\$3.7	\$2.2	(\$3.0)	(\$4.9)	\$2.0	\$8.9	\$8.9	\$9.3
High Estimate		\$17.6	\$8.9	\$3.0	\$0.7	\$0.2	\$2.2	\$29.4	\$29.5	\$31.2

Summary of Fiscal Effects of HB 1006									
	2015	2016	2017	2018	2019	2020	2025	2030	2035
*Potentially affects the release dates of 1,020 offenders who would be released after July 1, 2014.									

Additional Information-

Reclassifying Four Felony Classes to Six Felony Levels and Recalculating Release Date— The following table shows the proposed changes in sentencing. Class A felonies would become either Levels 1 or 2, and Class B felonies would become either Levels 3 or 4.

Felony Class				Felony Level			
	Minimum	Advisory ¹	Maximum		Minimum	Advisory ¹	Maximum
A	20 years	30 years	50 years	1	20 years	30 years	50 years
				2	10 years	17 years	30 years
B	6 years	10 years	20 years	3	3 years	6 years	20 years
				4	2 years	4 years	12 years
C	2 years	4 years	8 years	5	1 years	2 years	6 years
D	6 months	1.5 years	3 years	6	6 mos.	1 year	30 months
¹ An advisory sentence is a guideline sentence that the court may voluntarily consider as the midpoint between the maximum sentence and the minimum sentence (IC 35-50-2-1.3).							

Based on the changes proposed in the previous table, LSA assigned felony classes to felony levels as shown in the table below. The number of offenders are based on the annual average of full-time equivalent offenders who were committed to the DOC between FY 2007 and FY 2012.

Full-Time Equivalent Offenders Affected							
		Current Felony Class					
	Class or Level	Class A	Class B	Class C	Class D	Murder	Grand Total
Proposed Felony Level	1	128					128
	2	114	181				295
	3	51	548				599
	4	41	366	159			566
	5	2	1,096	2,284	305		3,687
	6		1	90	2,269		2,360
	Misdemeanor				642		642
	Murder					79	79

Full-Time Equivalent Offenders Affected							
		Current Felony Class					
	Class or Level	Class A	Class B	Class C	Class D	Murder	Grand Total
	Grand Total	336	2,192	2,533	3,216	79	8,356

Estimating the Changes in Offender Population – To estimate how this bill might affect DOC’s offender population, LSA used commitment data between FY 2007 and FY 2012 as the basis of this analysis. LSA categorized offenders by felony class and offense (example – Class A Robbery) and assigned these categories as felony levels based on the levels specified in the bill (as in this example – Level 2 Robbery). In some cases, the bill adds new felony levels for drug offenses and theft. In these cases, LSA assumed that there was an even distribution between the various levels. [Examples of how these assignments were made for various drug offenses and theft crimes are shown in a later section of this fiscal note.]

While exact sentencing patterns cannot be predicted, LSA multiplied the ratio of the current sentence to the current maximum sentence by the new maximum sentence to estimate what the new sentence would be.

Projected Offender Population Changes Based on All Sentences Being Proportionate To Maximum Sentences by Fiscal Year									
	2015	2016	2017	2018	2019	2020	2025	2030	2035
Change in Population	231	(461)	(937)	(1,416)	(1,578)	(1,036)	1,032	961	1,013

Credit Restoration – Under IC 35-50-6-5, DOC may deprive offenders of credit time when they violate rules of conduct. But, current law also permits DOC to restore any credit time to the offender. This bill would no longer permit DOC to restore credit time. DOC estimates that this provision will delay the release of some offenders and increase the number of FTE offenders by 354.

Recidivism and Added Growth (2%) – LSA added a 2% annual growth factor. The base year population used for the analysis is the DOC population on December 31, 2012, and a 2% annual growth rate is applied each year thereafter. This factor reflects added population as offenders who violate probation or parole are returned to DOC.

Chief and Deputy Chief Probation Officers (IC 11-13-1-1) – This provision requires each probation department to have both a chief and deputy chief probation officer. The salaries of these probation officers must be fixed by a salary schedule adopted by the county or municipal fiscal body under IC 36-2-16.5-3. The salary schedule must comply with the minimum compensation requirements for probation officers adopted by the Indiana Judicial Conference under IC 11-13-1-8. The minimum salaries of the chief and deputy chief probation officers must be reimbursed from the state General Fund.

The 2012 minimum salary schedule takes into account three factors: the years of experience for probation officers, the number of probation officers that are supervised in each department, and whether the probation officer has a master’s or doctorate degree from an accredited college or university.

[Currently, information on the number of chief and chief deputy probation officers is unavailable, so the impact

of this provision is indeterminable at this time. However, information will be provided when it becomes available.]

Probation Improvement Fund (IC 11-13-2.5) – The bill appropriates \$1.9 M annually from DOC’s appropriation to the Probation Improvement Fund. Donations, gifts, and money from transfers may also be directed to this fund. DOC is to recommend grants, and the Indiana Judicial Conference may award a grant from the fund to a county probation department that supervises convicted felons.

Judicial Center Drug and Alcohol Programs Fund (IC 12-23-14-17) – Under current law, the Judicial Center Drug and Alcohol Programs Fund is used to administer, certify, and support alcohol and drug service programs. As proposed, the Indiana Judicial Center could award a grant from the fund to a probation department or a community corrections program to increase substance abuse treatment access for individuals on probation or individuals placed in a community corrections program who are under court supervision and who have been diagnosed with a substance abuse disorder or co-occurring disorder. The Judicial Center would consult with the Division of Mental Health and Addiction and local probation departments or community corrections programs in determining the amounts of the grants. Any mental health and substance abuse counseling services provided by the grants would be provided by certified mental health or addiction providers as determined by the Division of Mental Health and Addiction.

Neglect Causing Death or Serious Bodily Injury (IC 35-50-2-2) – Any added prison population due to the increased stays in prison will depend on the number of offenders who are assigned to Level 1 or Level 2 felonies and the new minimum sentences that they would receive. This provision would likely increase the number of offenders who have extended stays because the offenders would have to be incarcerated for a mandatory minimum time.

To estimate the added number of offenders who might be affected, LSA assumed that in future years a portion of offenders who might otherwise receive a sentence that was less than the mandatory minimum sentence would now serve the mandatory minimum sentence.

Between 2007 and 2012, about 20% of Class A felony offenders received a prison sentence that was less than the mandatory minimum of 20 years (7 out of 36 offenders), while 31% of Class B felons (38 out of 123) received a prison sentence that was less than 6 years. Any added offenders will depend on the sentencing lengths associated with the felony levels.

Earned Credit Time (IC 35-50-6-3.3) – This provision will make five significant changes to how release dates will be affected, likely lengthening the stay of offenders who have accumulated earned credit time.

Under current law, offenders in DOC facilities can receive two types of credit time (called “time cuts”) that can reduce their length of stay in DOC facilities. First, under IC 35-50-6-3, offenders in the Class I credit classification can receive up to one day off for each day they are compliant with facility rules (“good time” credit). Second, if they are in the Class I credit classification, they can also receive earned credit time by successfully completing educational programs, vocational and technical programs, substance abuse programs, basic life skills programs, and reformatory programs.

The amount of earned credit time that an offender can receive is the lesser of four years or one-third of the person’s total applicable credit time. Offenders successfully completing bachelor’s degrees can earn two years credit time, and offenders completing associate’s degrees can earn one year of credit time.

DOC currently calculates the release date for an offender by first applying the “good time” credit (generally 50%) and then subtracting the earned credit time.

This bill will make five significant changes to how release dates will be affected.

(1) The bill limits the amount of earned credit time that offenders can receive for successfully completing associate’s and bachelor’s degrees to one and two years, respectively. Consequently, offenders who have completed more than one associate’s or bachelor’s degree would be limited to receiving either one year of credit, even if the offender completed more than one associate’s degree, or two years, even if the offender completed more than one bachelor’s degree.

The number of offenders who would be affected by this bill would depend on whether the bill would be retroactive to include offenders who have earned degrees prior to July 1, 2014, and have earliest possible release dates after July 1, 2014. The bill is silent on this issue. DOC reported that 1,020 offenders had received either bachelor’s or associate’s degrees before December 2012 and have earliest possible release dates after July 1, 2014, and will be younger than 72 years on the release date.

Offenders In DOC Facilities With An Earliest Possible Release Date After July 1, 2014, and Who Will Be Younger Than 72									
Year of Earliest Possible Release									
Degree Completed	2014	2015	2016	2017	2018	2019	2020	After 2020	Grand Total
Associate	55	90	72	48	40	44	34	207	590
Bachelor	30	54	48	56	34	26	21	161	430
Grand Total	85	144	120	104	74	70	55	368	1020

(2) The bill increases from six months to one year the amount of earned credit time that offenders can receive for completing one or more career and technical or vocational education programs. This could reduce the length of stay for offenders who enroll in these types of programs.

(3) The bill specifies that earned credit time is to be directly proportional to time served. Depending on how DOC formulates the rules to implement this section, the length of stay for some offenders may increase.

(4) The bill changes how earned credit time is to be applied to determine the release date. Currently, any good time credit is subtracted from the length of stay, and then any earned credit time is applied. As proposed, earned credit time would be applied first, and then the good time credit is to be applied. Offenders with no earned credit time will not be affected by this provision. The length of stay of any offenders with earned credit time will be extended, depending on the amount of earned credit that they have available.

The increase in the number of offenders from this change in determining the offender’s release date is included in the population increases shown below. [Note: This change in how the earned credit time is applied is reflected in the summary table (*Reclassification, Recalculating Release Date Based on Earned Credit Time*).]

(5) The bill limits the maximum amount of earned credit time to the lesser of two years or one-third of the person’s total applicable credit time. The current limit on earned credit time is the lesser of four years, or 1,460

days, or 1/3 of the person's applicable credit time. [Note: This change in how the earned credit time is applied is reflected in the summary table (*Reclassification, Recalculating Release Date Based on Earned Credit Time*).]

Applicable credit time is considered the total amount of earned credit time. Consequently, this provision would increase the length of stay of offenders who currently have more than two years of credit time.

DOC reported that between the 2010 and 2012 fiscal years, 171 of the offenders who were released accumulated more than two years of earned credit time. Consequently, roughly 57 offenders each year would be released at a later date. In the following table, a summary of the amount of earned credit time compiled illustrates the average amount of credit time earned by offenders between FY 2010 and 2012.

Time Cuts Earned by Offenders Released from DOC Facilities Between CY 2010 and 2012									
Offenders <u>NOT</u> Affected by Reducing the Maximum from 4 years to 2 years						<i>Offenders Affected by Reducing the Maximum from 4 years to 2 years</i>			Total Number of Offenders
30 Or Fewer	Between 30 and 60	Between 61 and 90	Between 91 and 183	Between 184 and 365	Between 366 and 730	<i>Between 731 and 1,095</i>	<i>Between 1,096 and 1,460</i>	<i>1,461 Or More</i>	
23,746	375	2,083	5,863	2,480	1,761	124	44	3	36,479
36,308						171			
65%	1%	6%	16%	7%	5%	0%	0%	0%	100%

Credit-Restricted Felons (IC 35-31.5-2-72) – This provision will reduce the length of stay for certain offenders who have been committed to DOC for child molesting. Under IC 35-50-6-3, offenders are assigned to different credit classes based on their behavior.

Credit Class	Number of Days an Offender Serves to Receive One Day of "Good Time" Credit By Credit Class
I	1
II	2
III	None
IV	6

The Credit Class IV offenders are the credit-restricted offenders that this provision affects. There were 182 credit-restricted felons who were in DOC facilities on January 1, 2013, the most recent day that DOC has information on these sex offenders. These Class IV offenders would be reassigned to either Class I, II, or III. Offenders in Class IV would have their lengths of stay reduced if they are reassigned to Classes I or II.

Examples of How Offenses Could be Reclassified – Since this bill significantly changes both drug and theft penalties, this portion of the fiscal note describes in more specific terms the assumptions that LSA made when determining how these offenses would be changed.

Drug Thresholds (IC 35-48) – This provision changes the enhancing circumstances and the weights of drugs to determine the felony level. Overall, the enhancing circumstances in this bill make the following changes:

- (1) The enhancement could be applied when persons under 18 years of age can be reasonably expected to be present in either the park or the school property.
- (2) The distance in the protective zones for schools and public parks would be reduced from 1,000 feet to 500 feet.
- (3) Family housing complexes and youth program centers would not be included in the protective zone.

The following table compares and contrasts the current enhancements with the enhancing circumstances in the proposed bill.

Enhancing Circumstances as Factor in Determining Felony Level for Controlled Substances (IC 35-48-1-16.5)		
<u>Circumstance</u>	<u>In Existing Law?</u>	<u>In Proposed Bill?</u>
Prior conviction for dealing in a controlled substance that is not marijuana, hashish, hash oil, salvia divinorum, or a synthetic drug	Limited to marijuana	Yes
School bus	Yes	Yes
Person under 18 or at least 3 years junior	Yes	Yes
Manufactured or financed the manufacture of drug	Yes	Yes
Distance from school property or public park	1,000 feet	500 feet
Time Element	No	Offense occurred while person under 18 reasonably expected to be present
Distance from family housing project or youth program center	1,000 feet	No

The following tables describe in further detail the drug weights that are proposed by this bill as compared to current law.

Proposed Changes in Drug Dealing and Manufacturing Offenses for Cocaine, Methamphetamine, and Schedule I, II, or III Controlled Substances (IC 35-48-4-1, 1.1, and 2)					
	Felony Class	Felony Level	Involving Meth	Involving Cocaine	Involving Schedule I, II, III
Less than 3 grams	Class B	Level 5	256	606	220
Between 3 and 10 grams or less than 3 grams and enhancing circumstance	Class A	Level 4	10	53	7
Between 10 and 28 grams or between 3 and 10 grams and enhancing circumstance	Class A	Level 3	10	53	7
More than 28 grams or between 10 and 28 grams and enhancing circumstance	Class A	Level 2	10	53	7
Manufacturing meth and causing explosion that results in serious bodily injury	Class A or B	Level 2	unknown		

Proposed Changes in Drug Dealing and Manufacturing Offenses for Schedule IV Controlled Substances (IC 35-48-4-3)			
	Felony Class	Felony Level	Offenders Affected
Less than 3 grams	Class C	Level 6	29
Less than 3 grams and enhancing circumstance	Class B	Level 5	unknown
Between 3 and 10 grams or less than 3 grams and enhancing circumstance	Class B	Level 5	2
Between 10 and 28 grams or between 3 and 10 grams and enhancing circumstance	Class B	Level 4	2
More than 28 grams or between 10 and 28 grams and enhancing circumstance	Class B	Level 3	2

Proposed Changes in Drug Dealing and Manufacturing Offenses for Schedule V Controlled Substances (IC 35-48-4-4)			
	Current Law	Proposed	Offenders Affected
Less than 3 grams	Class D Felony	Class A Misdemeanor	2
Between 3 and 10 grams or less than 3 grams and enhancing circumstance	Class B Felony	Level 6 Felony	1
Between 10 and 28 grams or between 3 and 10 grams and enhancing circumstance	Class B Felony	Level 5 Felony	1

Proposed Changes in Drug Dealing and Manufacturing Offenses for Schedule V Controlled Substances (IC 35-48-4-4)			
More than 28 grams or between 10 and 28 grams and enhancing circumstance	Class B Felony	Level 4 Felony	1

Proposed Changes in Possession Offenses for Cocaine or Methamphetamine (IC 35-48-4-6, 6.1)			
	Current Law	Proposed	Offenders Affected
Less than 3 grams	Class D	Level 6	minimal number
Less than 3 grams and enhancing circumstances	Class C or B	Level 4 or 5	
Between 10 and 28 grams or between 3 and 10 grams and enhancing circumstance	Class A	Level 4	
More than 28 grams or between 10 and 28 grams and enhancing circumstance	Class A	Level 3	

Proposed Changes in Possession Offenses for Schedule I, II, III, IV Controlled Substances (IC 35-48-4-7)			
	Current Law	Proposed	Offenders Affected
Any amount	Class D Felony	Class A Misdemeanor	265
Any amount and enhancing circumstances	Class C	Level 6	46

Proposed Changes in Dealing Offenses for Marijuana, Hash Oil, Hashish, Salvia Divinorum, or Synthetic Drug (IC 35-48-4-10)			
	Current Law	Proposed	Offenders Affected
Less than 30 grams	Class A Misdemeanor	Class B Misdemeanor	46
Between 30 grams and 10 pounds or between 2 and 300 grams of hash oil, hashish, salvia divinorum, or synthetic drug or less than 30 grams and prior conviction	Class D Felony	Class A Misdemeanor	
More than 10 pounds or more than 300 grams of hash oil, hashish, salvia divinorum, or synthetic drug of any amount and enhancing circumstance	Class C Felony	Level 6 Felony	34
More than 50 pounds of marijuana or 1,500 grams of hash oil, hashish, salvia divinorum, or synthetic drug	Class C Felony	Level 5 Felony	2

Proposed Changes in Possession Offenses for Marijuana, Hash Oil, Hashish, Salvia Divinorum, or Synthetic Drug (IC 35-48-4-11)			
	Current Law	Proposed	Offenders Affected
Less than 30 grams of marijuana or 2 grams of hash oil, hashish, salvia divinorum, or synthetic drug	Class A Misdemeanor	Class C Misdemeanor	unknown
More than 30 grams or 2 grams of hash oil, hashish, salvia divinorum, or synthetic drug or less than 30 grams and prior conviction	Class D Felony	Class A or B Misdemeanor	273

Theft Thresholds (IC 35-43-4-2) – Under current law, stealing any item can result in a Class D felony. As proposed, this bill would make stealing any item with a value of less than \$750 a Class A misdemeanor. The following table describes in more detail how the new felony levels would be assigned by the value of the item that is stolen.

<u>Value of Item Stolen</u>	<u>Current Law</u>	<u>Proposed</u>	<u>Offenders Affected</u>
Less than \$750	Class D Felony	Class A Misdemeanor	549
Between \$750 and \$50,000 or less than \$750 and prior conviction	Class D Felony	Level 6 Felony	549
Between \$50,000 and \$100,000	Class D Felony	Level 5 Felony	549
More than \$100,000	Class C Felony	Level 5 Felony	5

Explanation of State Revenues:

Explanation of Local Expenditures: *Consolidation of Community Corrections and Probation (IC 11-12-1-2)*

– In counties or combinations of counties that have established a community corrections program, a court with authority to impose probation may, with the consent of the community corrections advisory board, establish and operate a consolidated probation and community corrections department.

Chief and Deputy Chief Probation Officers (IC 11-13-1-1) – The number of probation departments that this bill would affect is currently not known.

(Revised) Penalty Reductions for Marijuana Possession and Certain Crimes of Theft – More individuals will likely be committed to either jails or assigned to probation or community corrections programs if these offenses are reclassified to be misdemeanors rather than felonies. The average number of offenders could be over 1,000, based on commitments to DOC between FY 2007 and 2012.

Explanation of Local Revenues:

State Agencies Affected: DOC; Indiana Judicial Center; Department of Mental Health and Addictions.

Local Agencies Affected: County sheriffs, trial courts, probation offices, community corrections programs.

Information Sources: Department of Correction Offender Information System.

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